

THE STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO CHARLESTON COUNTY
The Honorable R. Markley Dennis, Circuit Court Judge

Appellate Case No. 2014-001380

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SEP 20 2016

S.C. SUPREME COURT

LLOYD WRIGHT

Petitioner,

v.

STATE OF SOUTH CAROLINA

Respondent.

BRIEF OF RESPONDENT

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ISSUE PRESENTED

Did the PCR court have probative evidence to find Petitioner did not meet his burden to prove trial counsel failed to advise him of the mandatory nature of his potential life without parole sentence?

STATEMENT OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Petitioner was indicted at the December 2007 term of the Charleston County Grand Jury for possession with intent to distribute cocaine base- third offense (2007-GS-10-13898) and possession with intent to distribute cocaine base within the proximity of a school (2007-GS-10-13899). James W. Smiley, IV, Esquire, represented Petitioner. On May 18, 2009, Petitioner proceeded to a jury trial before the Honorable Kristi L. Harrington. The jury returned a guilty verdict on both charges and Petitioner was sentenced to confinement for a period of life without parole on both charges.

Petitioner timely filed a Notice of Appeal. LaNelle Durant, Esquire, of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Petitioner's convictions and sentences. State v. Wright, Op. No. 11-UP-363 (S.C. Ct. App. filed June 30, 2011). Petitioner filed a Petition for Writ of Certiorari in the South Carolina Supreme Court, which was denied on January 25, 2013 and the Remittitur was issued thereafter.

Petitioner filed a post-conviction relief (PCR) application on March 19, 2013, alleging ineffective assistance of counsel. Respondent made its Return on December 3, 2013. An evidentiary hearing convened on April 15, 2014, at the Charleston County Courthouse before the Honorable R. Markley Dennis. Petitioner was present and represented by Christopher L. Murphy, Esquire. Respondent was represented by Assistant Attorney General Ashleigh R. Wilson of the South Carolina Office of the Attorney General. By Order dated June 13, 2014 and filed June 19, 2014, Judge Dennis denied and dismissed Petitioner's application with prejudice.

STANDARD OF REVIEW

This Court must affirm the post-conviction relief (hereinafter "PCR") court's factual findings if there is any evidence of probative value in the record to support them. Dempsey v. State, 363 S.C. 365, 368, 610 S.E.2d 812, 814 (2005) (citing Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989)). The reviewing Court should reverse the PCR court only where there is no probative evidence to support the decision or the decision was controlled by an error of law. Kolle v. State, 386 S.C. 578, 589, 690 S.E.2d 73, 79 (2010). Furthermore, this Court "gives great deference to the [PCR] court's findings of fact and conclusions of law." Dempsey, 363 S.C. at 368, 610 S.E.2d at 814. "We give great deference to a judge's findings when matters of credibility are involved since we lack the opportunity to directly observe the witnesses." Solomon v. State, 313 S.C. 526, 443 S.E.2d 540, 542 (1994).

ARGUMENT

The PCR court had probative evidence to rule Petitioner did not meet his burden of proving trial counsel failed to advise Petitioner of the mandatory nature of his potential life without parole sentence.

Petitioner argues the PCR court erred when it ruled Petitioner failed to meet his burden to prove counsel failed to advise him of the mandatory nature of his potential life without parole sentence. The State disagrees. The PCR court correctly found Petitioner lacked credibility and trial counsel was credible and persuasive when he stated the following:

WILSON: So you didn't - - you did discuss the mandatory nature and that the Court didn't have any discretion on it?

SMILEY: **I believe that I did. I don't think there was question that if we lost that he wasn't coming home - - period.**" App. 408 (emphasis added).

The State argues, based on the testimony by trial counsel, there is probative evidence to support the PCR court's dismissal of Petitioner's PCR. Dempsey.

Petitioner mischaracterizes the record in his brief, "Counsel conceded that he did not recall telling Petitioner that the imposition of life without parole was mandatory instead of discretionary. *Id.* At 11. 9-22. (*Id.* to 407)." The referenced portion of Petitioner's brief includes the following:

WILSON: From your review of these documents, Mr. Wright indeed was eligible for a sentence of life without the possibility of parole; do you agree?

SMILEY: Absolutely. Proximity to schools are strikes.

WILSON: Did you discuss that and discuss that as an outcome, if convicted, with Mr. Wright?

SMILEY: Yeah. I talked to Lloyd that he was looking at life without parole the first time I met him because I knew his history. Whether he understood what "life without parole" means or not, I certainly talked to him about it.
(emphasis added)

From the record, trial counsel's lack of explanation concerned only what 'life without parole' means. Trial counsel admitted he did not discuss with Petitioner that life without parole meant life in jail without the possibility of parole because trial counsel "thought it was pretty self-explanatory that life without parole was life without parole." App. 408.

There is direct evidence on the record that trial counsel advised Petitioner concerning the mandatory nature of life without the possibility of parole. Trial counsel also testified Petitioner appeared to understand those discussions and the consequences of Petitioner's decision to go to trial. App. 407-408. Trial counsel's testimony was found credible by the PCR Court. App 431. Petitioner's testimony was found to be not credible. App 431. "We give great deference to a judge's findings when matters of credibility are involved since we lack the opportunity to directly observe the witnesses." Solomon. The PCR court's decision to dismiss Petitioner's application was correct and backed by probative testimony by trial counsel.


CONCLUSION

For the foregoing reasons, the State respectfully requests that the judgment of the PCR court be affirmed.

Respectfully submitted,

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Columbia, South Carolina
September 20, 2016

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Brief of Respondent complies with Rule 211(b), SCACR, and the September 20, 2016, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Brief of Respondent** has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

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This 20th day of September, 2016.



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